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OFFICE OF PETITIONS

In re Application of :
Cannon et al. : DECISION ON PETITION
Application Number: 09/924482 :
Filing Date: 08/09/2001 :
Attorney Docket Number: Cannon :
125-113-73 :

This is a decision on the "RENEWED PETITION UNDER 37 CFR 1.137(B) TO WITHDRAW ERRONEOUS HOLDING OF ABANDONMENT," filed on May 6, 2008, which, under the circumstances of this case, is treated as a renewed petition under 37 CFR 1.137(b).¹

The petition is **GRANTED**.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d)).

This application became abandoned on November 6, 2004, for failure to timely file a response to the Office action requiring Restriction and/or Election mailed on October 5, 2004, which set a one (1) month shortened statutory period for reply. Notice of Abandonment was mailed on September 21, 2007.²

On November 28, 2007, a petition to withdraw the holding of abandonment was filed. On January 8, 2008, the petition to withdraw the holding of abandonment was dismissed. On January 24, 2008, a petition under 37 CFR 1.137(b) was filed. On March 6, 2008, the petition was dismissed.

Receipt of the response to the restriction requirement is acknowledged.

The application is being referred to Technology Center Art Unit 2614 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

² Although no copy of the Notice of Abandonment is located in the USPTO's Image File Wrapper, petitioner states that the Notice of Abandonment has been received, and a review of the Office PALM records reveal that a Notice of Abandonment was mailed on September 21, 2007.